IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 197 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE Sd/-
and
Hon'ble MR.JUSTICE D.A.MEHTA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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COMMISSIONER OF INCOME-TAX

Versus

SHAH ENGINEERING CO.

Appearance:

1. INCOME TAX REFERENCE No. 197 of 1986
MR BB NAYAK FOR MR MANISH R BHATT for Applicant.
MR NR DIVETIA for Respondent No. 1

CORAM : MR.JUSTICE A.R.DAVE
and
MR.JUSTICE D.A.MEHTA

Date of decision: 05/07/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE D.A.MEHTA)

1. The Income-tax Appellate Tribunal, Ahmedabad, Bench 'A' has referred the following two questions u/s.256(2) of the Act for our opinion :

"1. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the assessee firm is an industrial undertaking and hence entitled to investment allowance u/s.32A(2) (b) (iii) of the Income-tax Act,1961 ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law holding that tractors and trailers were eligible for investment allowance under section 32A of the Income-tax Act,1961 ?"

2. It is not necessary for us to set out the facts in detail as it is common ground between the parties that the controversy is concluded by the Apex Court in the case of Commissioner of Income-tax Vs. N.C.Budheraja & Co., reported in 204 I.T.R.412 and in the case of Builders Association of India Vs. Union of India & Others, reported in 209 I.T.R.877.

3. We, therefore, answer the first question in the negative i.e. against the assessee and in favour of the revenue. The answer to second question would be also in the negative i.e. in favour of the revenue and against the assessee. We may clarify that the answer to second question is in light of the finding recorded by the Tribunal viz. the facts in this particular case.

4. The Reference is thus disposed of accordingly with no order as to costs.

Sd/- Sd/-
(A.R.Dave, J) (D.A.Mehta,J)

m.m.bhatt